

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**BRIAN CARRICO; KACIE CARRICO;  
DON GATLIN; and DORA GATLIN;  
individually and on behalf of all others  
similarly situated,**

**Plaintiffs,**

**v.**

**UPONOR, INC.; UPONOR NORTH  
AMERICA, INC.; DOES 1 through 100,  
inclusive, whose true names are unknown,**

**Defendants.**

**Case No. 3:23-CV-00497**

**District Judge Eli Richardson**

**Magistrate Judge Jeffrey S. Frensley**

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**DECLARATION OF STACEY BEISSEL IN SUPPORT OF DEFENDANT UPONOR,  
INC.'S AND SPECIALLY APPEARING DEFENDANT UPONOR NORTH  
AMERICA, INC.'S RESPECTIVE DISMISSAL MOTIONS**

I, Stacey Beissel, declare as follows:

1. I am the Manager, Claims, Risk and Insurance, for Uponor North America, Inc. and its subsidiary, including Uponor, Inc. I have personal knowledge of the matters set forth herein, and if called to testify as a witness, I could and would competently testify to the matters stated in this Declaration.

2. I submit this Declaration in support of: (A) Uponor, Inc.'s Motion to Compel Arbitration; or, in the Alternative, to (1) Dismiss Plaintiffs' Complaint and Class Allegations; and (2) Strike Class Allegations; and (B) Uponor North America, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction or, Alternatively to (1) Compel Arbitration; (2) Dismiss Plaintiffs' First Amended Complaint ("FAC") and Class Allegations; and (3) Strike Class Allegations.

3. Uponor, Inc. is an Illinois corporation that maintains its corporate office in Apple Valley, Minnesota. Uponor, Inc. manufactures and sells, among other things, cross-linked polyethylene tubing ("PEX") that is used in potable water plumbing systems, including both blue

and red colored PEX and translucent PEX.

4. Uponor North America, Inc. is a holding company incorporated in Delaware which does not manufacture any products, including PEX.

5. I have reviewed the FAC filed by Plaintiffs Brian Carrico, Kacie Carrico, Don Gatlin, and Dora Gatlin (“Plaintiffs”), in which they refer to certain “blue and red colored cross-linked polyethylene tubing” allegedly “manufactured and/or distributed by” Uponor, Inc. and installed in their homes in or around June 2014 and February 2017.

6. All PEX sold by Uponor, Inc. in the United States between October 15, 2012 and the present, including the blue and red PEX referenced in Plaintiffs’ FAC, is subject to and governed by a written limited product warranty (the “Warranty”). A true and correct copy of the Warranty applicable to the homes alleged to be owned by Plaintiffs is attached to this Declaration as **Exhibit 1**.

7. During that same period of time, the Warranty was continuously published and publicly available on Uponor’s website.

8. Uponor, Inc. is aware that its PEX is frequently purchased and used by builders, developers and/or plumbers who incorporate the PEX into the homes or other residential structures they are constructing, some of which homes/structures are then sold to individual homeowners. Uponor, Inc. therefore understands and intends that its Warranty will ultimately be transferred to, cover, and apply to persons who acquire homes from builders and/or developers containing PEX, and that those owners will become the beneficiaries of the Warranty.

9. Consistent with this understanding and intention, Uponor, Inc. and its authorized representatives regularly train plumbers, including those involved in the selection, installation and repair of residential potable water plumbing systems, with respect to PEX products, so that they

are qualified and able to respond to and provide service as well as advice addressing any needs that individual homeowners may have with respect to PEX installed in their homes. As part of the knowledge-base available to Uponor, Inc.-trained plumbers is the fact that the PEX is subject to, and covered by, a written Uponor warranty.

10. Based on my experience in handling warranty claims submitted to Uponor, Inc. by homeowners and plumbers, it is common for plumbers who are involved in and/or perform repairs to PEX products installed as part of residential potable water plumbing systems, to advise homeowners that they may submit a claim pursuant to the Warranty.

11. In my capacity as Manager, Claims, Risk and Insurance, I have knowledge of warranty claims received and processed by Uponor, Inc. related to PEX. Based upon my review of records maintained in the ordinary course of business, Uponor, Inc. does not have any record, prior to this lawsuit, of Plaintiffs or any other person or entity (i) submitting any warranty claim, (ii) requesting the repair, replacement, or return of, or otherwise (iii) providing notice of any performance issues involving, the PEX allegedly installed as part of the potable water plumbing system in Plaintiffs' homes.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on August 28, 2023 at Hastings, Minnesota.

  
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Stacey Beissel

### **CERTIFICATE OF SERVICE**

I, the undersigned attorney, do hereby certify that the foregoing pleading was electronically filed with the Clerk of Court using the CM/ECF filing system which automatically sends email notifications of such filing to the following attorneys of record:

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/s/ M. Andrew Pippenger  
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**UPONOR, INC. LIMITED WARRANTY Valid for Uponor AquaPEX-a® Tubing, ProPEX® and Other Select Plumbing Products**

**This Warranty is Effective For Installations Made After October 15, 2012**

Subject to the terms and conditions of this Limited Warranty, Uponor, Inc. ("Uponor") warrants to the owner of the applicable real property that the Uponor products listed below shall be free from defects in materials and workmanship, under normal conditions of use when installed as part of a potable water distribution system.

Unless otherwise specified, this Limited Warranty for the applicable Uponor products shall commence on the date the product was installed ("Commencement Date") and will expire after the following number of years:

- (a) Twenty-Five (25) years for Uponor AquaPEX-a® tubing, Uponor ProPEX® fittings and ProPEX® rings when all are installed in combination with each other;
- (b) Ten (10) years for Uponor AquaPEX-a® tubing when installed in combination with non-Uponor fittings;
- (c) Ten (10) years for Uponor EP valves, EP valveless manifolds and Uponor tub ells, stub ells, and straight stubs;
- (d) Two (2) years for Uponor metal manifolds, Uponor EP manifolds with valves;
- (e) Five (5) years for the Uponor D'MAND® system;
- (f) Two (2) years for all other components of the Uponor ProPEX® fitting system and all other plumbing items listed in Uponor's catalog as of the effective date of this limited warranty.

For purposes of this warranty, the use of Uponor AquaPEX-a® tubing, Uponor ProPEX® fittings and ProPEX® rings in combination with each other shall constitute an Uponor ProPEX® system.

**Exclusions From Limited Warranty:**

This limited warranty applies **only** if the applicable Uponor products identified above: (a) are selected, configured and installed by a certified licensed plumbing contractor recognized by Uponor as having successfully completed the Uponor AquaPEX® training course and according to the installation instructions provided by Uponor; (b) are not exposed to temperatures and/or pressures that exceed the limitations printed on the warranted Uponor product or in the applicable Uponor installation manual; (c) remain in their originally installed location; (d) are connected to potable water supplies; (e) show no evidence of misuse, tampering, mishandling, neglect, accidental damage, modification or repair without the approval of Uponor; and (f) are installed in accordance with then-applicable building, mechanical, plumbing, electrical and other code requirements; (g) are installed in combination with Uponor AquaPEX-a® tubing unless otherwise specified below.

Without limiting the foregoing, this limited warranty does not apply if the product failure or resulting damage is caused by: (a) faulty installation; (b) components not manufactured or sold by Uponor; (c) exposure to ultra violet light; (d) external physical or chemical conditions, including, but not limited to chemically corrosive or aggressive water conditions; or (e) any abnormal operating conditions.

The use of non-Uponor termination devices such as tub/shower valves, sill cocks, stops and other similar components that attach at the termination or end-point of a run or branch of Uponor AquaPEX-a® tubing does not disqualify the additional parts of the Uponor ProPEX® fitting system from the terms of this Limited Warranty. Only the non-Uponor termination devices themselves are excluded from the Uponor Limited Warranty.

**The use of non-Uponor AquaPEX-a® tubing disqualifies any and all parts of the Uponor ProPEX fitting® system from the terms of this Limited Warranty. This exclusion does not include certain circumstances wherein Uponor AquaPEX-a® tubing is installed in combination with CPVC, copper, PPR, or stainless steel pipe risers as may be required in limited residential and commercial plumbing applications. The use of non-Uponor fittings in combination with Uponor ProPEX® fittings disqualifies Uponor ProPEX fittings® from the terms of this Limited Warranty.**

**EXHIBIT**

**Warranty Claim Process (for building owners and homeowners only):**

Written notification of an alleged failure of, or defect in, any Uponor part or product identified herein should be sent to Uponor, Attn: Warranty Department, 5925 148th Street West, Apple Valley, Minnesota 55124 or by facsimile to (866) 351-8402, and must be received by Uponor within thirty (30) days after detection of an alleged failure or defect occurring within the applicable warranty period. All products alleged to be defective must be sent to Uponor for inspection and testing for determination of the cause of the alleged failure or defect.

**Exclusive Remedies:**

If Uponor determines that a product identified herein has failed or is defective within the scope of this limited warranty, Uponor's liability is limited, at the option of Uponor, to: issue a refund of the purchase price paid for, or to repair or replace the defective product.

Notwithstanding anything to the contrary in this limited warranty, if Uponor determines that any damages to the real property in which a defective product was installed were the direct result of a leak or failure caused by a manufacturing defect in an Uponor product covered by this limited warranty and occurring within the first ten (10) years after the applicable Commencement Date or during the applicable limited warranty period, whichever is shorter, and if the claimant took reasonable steps to promptly mitigate (i.e., limit or stop) any damage resulting from such failure, then Uponor may at its discretion, reimburse claimant for the reasonable costs of repairing or replacing such damaged real property, including flooring, drywall, painting, and other real property damaged by the leak or failure. Uponor shall not pay for any other additional costs or expenses, including but not limited to, transportation, relocation, labor, repairs or any other work associated with removing and/or returning failed or defective products, installing replacement products, damage to personal property or damage resulting from mold.

**Warranty Claim Dispute Process:**

In the event claimant and Uponor are unable to resolve a claim through informal means, the parties shall submit the dispute to the American Arbitration Association or its successor (the "Association") for arbitration, and any arbitration proceedings shall be conducted before a single arbitrator in the Minneapolis, Minnesota metropolitan area. NOTWITHSTANDING THE FOREGOING, NEITHER THE CLAIMANT NOR UPONOR, INC. SHALL BE ENTITLED TO ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS, AND NEITHER THE CLAIMANT NOR UPONOR SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS WITH ANY OTHER PARTIES IN ARBITRATION OR IN LITIGATION BY CLASS ACTION OR OTHERWISE.

**Transferability:**

This limited warranty may only be assigned by the original owner of the applicable real property and may not be assigned or transferred after the period ending ten (10) years following the Commencement Date.

**Miscellaneous:**

By the mutual agreement of the parties, it is expressly agreed that this limited warranty and any claims arising from breach of contract, breach of warranty, tort, or any other claim arising from the sale or use of Uponor's products shall be governed and construed under the laws of the State of Minnesota. It is expressly understood that authorized Uponor sales representatives, distributors, and plumbing professionals have no express or implied authority to bind Uponor to any agreement or warranty of any kind without the express written consent of Uponor.

THIS LIMITED WARRANTY IS THE FULL EXTENT OF EXPRESS WARRANTIES PROVIDED BY UPONOR, AND UPONOR HEREBY DISCLAIMS ANY WARRANTY NOT EXPRESSLY PROVIDED HEREIN, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS COVERED HEREUNDER.

UPONOR FURTHER DISCLAIMS ANY STATUTORY OR IMPLIED WARRANTY OF HABITABILITY.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS LIMITED WARRANTY, UPONOR FURTHER DISCLAIMS ANY RESPONSIBILITY FOR LOSSES, EXPENSES, INCONVENIENCES, AND SPECIAL, INDIRECT, SECONDARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OR RESULTING IN ANY MANNER FROM THE PRODUCTS COVERED HEREUNDER. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

THIS LIMITED WARRANTY GIVES THE CLAIMANT SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

Revised as of 8/2012

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**uponor**